

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES,

**1:06-cr-287
(GLS)**

v.

PAUL N. ALDRICH,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE UNITED STATES:

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FOR THE DEFENDANT:

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**Gary L. Sharpe
District Court Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

On October 17, 2011, the United States Department of Probation (“Probation”) petitioned the court for a modification of defendant Paul

Aldrich's conditions of supervised release. (See Dkt. No. 24.) Aldrich opposes the modification arguing, *inter alia*, that he already completed his term of supervised release, and thus, the court lacks jurisdiction over him. (See Dkt. No. 36.) For the reasons that follow, Probation's petition is granted and Aldrich's terms of supervised release are modified.

II. Background

On April 24, 2007, Aldrich was sentenced to thirty months imprisonment, followed by three years of supervised release, in connection with his guilty plea to a violation of 18 U.S.C. § 922(g)(1). (Dkt. No. 35 at 2.) To this end, Aldrich was remanded to the custody of the Bureau of Prisons ("BOP"), and in July 2008, was incarcerated at the Federal Correctional Institution in Butner, North Carolina. (*Id.*) Roughly two and a half months before his scheduled release date of October 10, 2008, the Special Assistant United States Attorney for the Eastern District of North Carolina certified Aldrich as a sexually dangerous person under 18 U.S.C. § 4248(a). (*Id.*; Dkt. No. 36 at 2-3.) This certification, which was based on a review of Aldrich's BOP records, stayed his release. (Dkt. No. 36 at 2-3; see also Dkt. No. 36, Attach. 2.) However, prior to trial in the civil commitment case, the government voluntarily withdrew its petition, and

Aldrich was released on October 13, 2011. (Dkt. No. 36 at 3.)

The next day, Aldrich returned to the Northern District of New York to begin his supervised release, and shortly thereafter was informed that Probation sought to modify his terms of supervised release to include an additional seven “sex offense” conditions.¹ (*Id.* at 2-3.) Aldrich’s refusal to acquiesce prompted the instant petition. (Dkt. No. 35 at 2.)

On November 14, 2011, the court held a preliminary hearing during which it heard arguments from both parties on the jurisdiction question. Though it provisionally imposed four of the requested modifications, and stayed consideration of a fifth, (see Dkt. No. 24 at 1-2), the court permitted the parties to file supplemental briefs addressing the jurisdictional issue and “any other issue arising in connection with” Probation’s proposed modifications. (Dkt. No. 36 at 4.) Both parties elected to do so, and filed their respective briefs on December 2, 2011. (See Dkt. Nos. 35, 36.)

III. Discussion

As a threshold matter, the court must address Aldrich’s assertion that it lacks jurisdiction, a challenge which hinges on the following questions: (1)

¹ The proposed conditions, labeled numbers one through seven, are detailed in Probation’s petition. (See Dkt. No. 24 at 1-2).

whether Aldrich's certification as a sexually dangerous person under 18 U.S.C. § 4248(a) tolled his term of supervised release; and (2) the date on which Aldrich was "released from imprisonment." The government argues that the certification was essentially immaterial, and that Aldrich was "released" on October 13, 2011. (See Dkt. No. 35 at 3-7.) Conversely, Aldrich contends that his term of supervised release began on October 10, 2008, the date the BOP determined he would be "released from imprisonment." (See Dkt. No. 36 at 4-12.) In so arguing, Aldrich concedes that his certification under section 4248 "does not change that result." (Dkt. No. 36 at 7.) While the court concurs with the parties assessment of the interplay between 18 U.S.C. §§ 3624(e) and 4248, it concludes—in light of the Supreme Court's decision in *United States v. Johnson*, 529 U.S. 53 (2000)—that Aldrich was released on October 13, 2011.

A. **The Effect of Section 4248 on a Term of Supervised Release**

Section 4248, enacted as part of the Adam Walsh Child Protection and Safety Act of 2006, empowers the government to "stay the release" of inmates it certifies to be "sexually dangerous," pending the outcome of a civil commitment proceeding. See 18 U.S.C. § 4248(a). In construing this statute, the court must begin with the statutory language, "for if the intent of

Congress is clear, that is the end of the matter.” *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 409 (1993) (internal quotations omitted). Notably, Congress used the word “stay” when describing the effect the certification has on the release of the inmate. See 18 U.S.C. § 4248(a); see also *Black’s Law Dictionary* 1453 (8th ed. 2004) (defining a “stay” as a “postponement or halting of a proceeding, judgment, or the like.”).

Here, the term “stay” must be considered in conjunction with the event it modifies—that is, the release of an inmate. It follows that the intent of section 4248 was to merely postpone an inmate’s release, not to modify an event which occurs thereafter. See *United States v. Brown*, No. 3:04-cr-119, 2011 WL 1831627, at *4 (D. Alaska May 12, 2011) (finding that 18 U.S.C. § 4248 does not “toll” the term of supervised release); accord *United States v. Bolander*, No. 01-cr-2864, 2010 WL 5342202, at *2 (S.D. Cal. Dec. 21, 2010); *Tobey v. United States*, Civ. No. 10-1358, 2011 WL 2623495, at *7 (D. Md. June 29, 2011). Thus, in the context of the present dispute, section 4248’s only relevance is that it served as the justification for delaying Aldrich’s release from imprisonment.

B. Aldrich’s Release From Imprisonment

Section 3624(e) of Title 18 states in relevant part:

The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days.

18 U.S.C. § 3624(e). In defining the operative phrase—“released from imprisonment”—the Supreme Court stated the “commonsense meaning of release is to be freed from confinement.” *Johnson*, 529 U.S. at 57. Stated another way, one cannot be released if he is still incarcerated. See *id.*

Indeed, this case is, with the exception of the justification for the prolonged period of incarceration, indistinguishable from *Johnson*. In that case, the Court held that the Sixth Circuit erred when it found that Johnson’s term of supervised release should be reduced by 2.5 years, the additional time he served on two convictions which were vacated after he was incarcerated. See *Johnson*, 529 U.S. at 54-55. To this end, the Court rejected the Circuit’s reliance on section 3624(a)—which states “[a] prisoner shall be released . . . on the date of the expiration of the prisoner’s

term of imprisonment”²—by clarifying the following with respect to a term of supervised release:

All concede respondent’s term of imprisonment should have ended earlier than it did. It does not follow, however, that the term of supervised release commenced, as a matter of law, once he completed serving his lawful sentences. It is true the prison term and the release term are related, for the latter cannot begin until the former expires. Though interrelated, the terms are not interchangeable Supervised release has no statutory function until confinement ends. . . . [Moreover,] [t]he objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release.

Id. at 58-59.

Here, it is undisputed that Aldrich was scheduled to be released on October 10, 2008, but was not actually released until October 13, 2011. Irrespective of the justification for the prolongment of his incarceration, Aldrich was not “released”—*i.e.*, “freed from confinement”—until October 13, 2011. See *Johnson*, 529 U.S. at 57. Though Aldrich argues to the

² Although rejected by the Court, Aldrich appears to follow the Sixth Circuit’s reasoning with respect to the applicability of 18 U.S.C. § 3624(a). (See Dkt. No. 36 at 6-9.) Essentially, Aldrich, relying on *Brown*, 2011 WL 1831627, at *5, seeks a declaration that “release from imprisonment” for the purposes of section 3624(e) “occurs at the end of the term of imprisonment,” not when the inmate is actually released from BOP’s custody. (See *id.* at 10-11.) However, *Brown* is premised on the distinction between detention and imprisonment, a distinction the Ninth Circuit drew in *Morales-Alejo*. See *Brown*, 2011 WL 1831627, at *4 (citing *United States v. Morales-Alejo*, 193 F.3d 1102, 1105 (9th Cir. 1999)). Though binding in the Ninth Circuit, *Morales-Alejo* predated *Johnson*; was renounced by the Fourth, Fifth, Sixth, and Eleventh Circuits, *United States v. Ide*, 624 F.3d 666, 669 (4th Cir. 2010); and is unrelated as it addresses how a period of pre-trial detention tolls a term of supervised release, see *Morales-Alejo*, 193 F.3d at 1102. As such, Aldrich’s reliance on *Brown* is, simply put, misplaced.

contrary, section 3624(e) “is clear and precise. Release takes place on the day the prisoner in fact is freed from confinement.” See *id.* at 58. Accordingly, Aldrich’s term of supervised release commenced on October 13, 2011, and he remains subject to the court’s supervision during his three year term of supervised release.³

C. The Instant Petition

Turning to Probation’s request to modify Aldrich’s conditions of supervised release, counsel for Aldrich avers the court should deny Probation’s request because there has not been a change in circumstances warranting a modification. (See Dkt. No. 36 at 15.) The court disagrees.

Under 18 U.S.C. § 3583(e)(2), the court may, after considering the section 3553(a) factors, “modify terms and conditions of supervised release following its initial imposition of a supervised release term in order to account for new or unforeseen circumstances.” See *United States v.*

³ To the extent Aldrich seeks to assert a facial and/or as-applied constitutional challenge to 18 U.S.C. §§ 3624, 4248 these arguments are equally unavailing. (See Dkt. No. 36 at 12-15.) Given the Court’s decisions in *Johnson*, 529 U.S. at 54, where a term of supervised release was imposed after an unauthorized period of detention, and *United States v. Comstock*, 130 S. Ct. 1949 (2010), where it affirmed the civil commitment scheme under 18 U.S.C. § 4248, the stay of Aldrich’s release, followed by the imposition of a term of supervised release is constitutionally permissible.

Lussier, 104 F.3d 32, 36 (2d Cir. 1997.) Here, in considering the factors outlined in 18 U.S.C. § 3553(a), the court is mindful of, *inter alia*, the following: (1) the circumstances surrounding Aldrich's 1990 conviction for Sexual Abuse in the First Degree, in which Aldrich admitted to sodomizing his two year old son; (2) his 2004 charge of Sexual Abuse in the Second Degree in which Aldrich allegedly touched an eleven year old's penis and genital area;⁴ and (3) BOP's findings that Aldrich was a pedophile, and that "he will have serious difficulty refraining from sexually violent conduct or child molestation if released," (see Dkt. No. 36, Attach. 2 at 5).

In his brief, Aldrich seeks to limit the scope of the court's review by arguing that his PSR is inconsequential since it was available at the time of sentencing. (See Dkt. No. 36 at 15-16.) The court rejects this argument. While the information contained in the PSR is certainly not new, it must be reevaluated in light of the BOP's opinion that Aldrich remains a threat to children.

After considering all of the factors discussed above, the court concludes that its "previously imposed term[s] or condition[s] of release

⁴ See PSR dated March 29, 2007 by U.S. Probation Officer Dan J. Voice.

[are] . . . inappropriately tailored to serve the general punishment goals of section 3553(a)." See *Lussier*, 104 F.3d at 36. As such, Probation's request to modify Aldrich's conditions of supervision is granted with respect to conditions 1, 2, 3, 5 and 7 as articulated in Probation's petition to the court. (See Dkt. No. 24.)

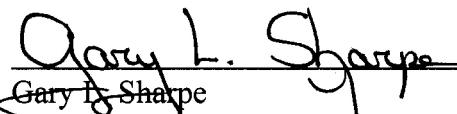
IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that Probation's petition to modify Aldrich's conditions of supervision (Dkt. No. 24) is granted with respect to conditions 1, 2, 3, 5 and 7; and it is further

ORDERED that the Clerk provide a copy of this memorandum-decision and order to the parties.

IT IS SO ORDERED.

December 13, 2011
Albany, New York



Gary L. Sharpe
U.S. District Judge